

**EXHIBIT A**  
**CASE NO. 3:19-cv-00360**

## THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **BODEGA LATINA CORPORATION dba EL SUPER**, which may be served with process by serving its registered agent, URS AGENTS LLC, at 3610-2 N JOSEY LANE, SUITE 223, CARROLLTON, TX 75007

Greetings:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's First Amended Petition with Jury Demand and Request for Disclosure** at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **205<sup>th</sup> Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on the 17<sup>th</sup> day of October, 2019, by Attorney at Law **MICHAEL ANDERSON**, 2101 N. STANTON, EL PASO, TX 79902 in this case numbered **2019DCV4034** on the docket of said court, and styled:

**MOISES PEREZ  
VS  
BODEGA LATINA CORPORATION DBA EL SUPER**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **Plaintiff's First Amended Petition with Jury Demand and Request for Disclosure** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on the 24<sup>th</sup> day of October, 2019.

Attest: NORMA FAVELA BARCELEAU, District Clerk, El Paso County, Texas.

CLERK OF THE COURT  
**NORMA FAVELA BARCELEAU**  
District Clerk  
El Paso County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso Texas, 79901

ATTACH  
RETURN RECEIPTS  
WITH  
ADDRESSEE'S SIGNATURE

Rule 106 (a) (2) the citation shall be served by mailing to the defendant by Certified Mail Return receipt requested, a true copy of the citation. Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

\*NAME OF PREPARER \_\_\_\_\_ TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_



*Veronica Cables*  
Veronica Cables, Deputy

### CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the 12 day of NOV., 2019, at 4:00 pm I mailed to Bodega Latina Corporation dba El Super 401 URS Agents, LLC

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the Plaintiff's First Amended Petition with Jury Demand and Request for Disclosure attached thereto.

*Process Server*  
Process Server, TITLE

**RETURN OF SERVICE**

Delivery was completed on \_\_\_\_\_, delivered to \_\_\_\_\_  
\_\_\_\_\_ as evidence by Domestic Return Receipt PS Form 3811  
attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was returned  
undelivered marked \_\_\_\_\_.

This forwarding address was provided: \_\_\_\_\_

El Paso County, Texas

By: \_\_\_\_\_  
Deputy District Clerk

OR

\_\_\_\_\_ Name of Authorized Person

By: \_\_\_\_\_

**VERIFICATION BY AUTHORIZED PERSON**

State of Texas

County of El Paso

Before me, a notary public, on this day personally appeared \_\_\_\_\_, known to me to be the person  
whose name is subscribed to the foregoing Return of Service, and being by me first duly sworn, declared, "I am  
disinterested party qualified to make an oath of that fact and statements contained in the Return of Service and true and  
correct."

Subscribed and sworn to be on this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**IN THE 205TH DISTRICT COURT  
EL PASO COUNTY, TEXAS**

Moises Perez,  
Plaintiff

v.

CAUSE NO. 2019-DCV-4034

Bodega Latina Corporation dba El Super,  
Defendant.

**PLAINTIFF'S FIRST AMENDED PETITION WITH JURY DEMAND AND  
REQUEST FOR DISCLOSURE**

TO THE HONORABLE COURT:

Plaintiff, Moises Perez ("Employee Perez"), files this Original Petition complaining of Defendant, Bodega Latina Corporation dba El Super ("Employer Bodega Latina Corporation dba El Super"), and respectfully shows as follows:

**I. DISCOVERY LEVEL**

1. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

**II. PARTIES**

2. Plaintiff, Moises Perez, is an individual residing in Socorro, Texas.
3. Defendant, Bodega Latina Corporation dba El Super, is a foreign corporation which may be served with process by serving its registered agent, URS Agents LLC, at 3610-2 N. Josey Lane, Ste. 223, Carrollton, TX 75007, or wherever they may be found.

**III. VENUE**

4. Pursuant to Texas Civil Practice and Remedies Code Section 15.002, venue is proper in El Paso County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in El Paso, Texas.

15. Instead of returning Employee to the same position, or a substantially similar position, Employer Bodega Latina terminates the Employee's employment on June 5, 2019.
16. Before June 5, 2019, Employer had no write ups or written disciplinary actions against the Employee.
17. The Employee is Moises Perez who is fifty-one years old.

## **V. CAUSES OF ACTION**

### AGE DISCRIMINATION AND RETALIATION

18. Employee Perez was discriminated, retaliated against, and fired in violation of the Texas Commission on Human Rights Act, codified at Texas Labor Code Chapter 21, which protects employees over the age of forty from age discrimination.

### RETALIATION

19. Defendant committed an unlawful employment practice against Employee Perez in violation of section 21.055 of the Texas Labor Code.
20. All conditions precedent to the filing of this action have occurred or have been fulfilled.

### FAMILY & MEDICAL LEAVE ACT

21. Employee Perez was an eligible employee as defined by 29 U.S.C. §2611 of the FMLA because Employee Perez worked for Employer Bodega Latina Corporation for at least 12 months and for at least 1250 hours of service during the previous 12-month period before Employee Perez first took and or requested FMLA leave.
22. Employee Perez was also an "individual" (as distinct from an "eligible employee") entitled to be free from discrimination and retaliation as set out in 29 U.S.C. §2615(a)(2),(b).
23. Employer Bodega Latina Corporation is a "person" under the FMLA.

#### **IV. CHRONOLOGY OF FACTS**

5. Employers MUST safely protect employees from age discrimination to protect employees, like all of us, from emotional injuries and from being fired.
6. Bodega Latina Corporation is an employer.
7. Employer Bodega Latina Corporation MUST safely protect employees from age discrimination to protect employees, like all of us, from emotional injuries and from being fired.
8. In the year 2016, Employer Bodega Latina Corporation hires an Employee as a Store Director.
9. Employer Bodega Latina Corporation District Manager Rivas witnesses Employee taking medication for diabetes and tells him that he was "too old".
10. Employer Bodega Latina Corporation District Manager Rivas once sat with Employee in the Hot Food Department when Employee tells him "Como pollito para llegar a viejito [I eat chicken to get to old age]," when District Manager replies "Ya hace mucho que se paso [You long since passed the old age mark]."
11. On or about April 25, 2019, District Manager Rivas once again tells employee that he is "too old."
12. On April 26, 2019, Employee is ill from a stomach flu and takes medical leave to see the doctor.
13. Employee returns to work with a doctor's excuse slip to return to work on May 2, 2019.
14. District Manager Rivas refuses to accept the doctor's medical return to work slip when Employee hands him the note.

24. Employer Bodega Latina Corporation violated the FMLA with respect to Employee Perez in the following and other respects:

A. Employer Bodega Latina Corporation fired Employee Perez on or about June 5, 2019, without providing him the leave entitlement and job-protection benefits guaranteed by the FMLA because of his own serious health condition;

#### **VI. NOTICE OF RIGHT TO SUIT**

25. Attached as Exhibit A is the Notice of Right to File a Civil Action.

#### **VII. HARMS AND LOSSES**

26. Employee Perez seeks back pay, front pay, and/or lost wages and benefits in the past and future. Further, Employee Perez is entitled to compensatory damages, including pecuniary damages, mental anguish or emotional pain and suffering inconvenience, and loss of enjoyment of life in the past and in the future.

27. Additionally, Employee Perez is entitled to recover punitive damages against Employer Bodega Latina Corporation because Employer Bodega Latina Corporation acted with malice, or, at least, with reckless and/or conscious indifference to Employee Perez' state-protected rights to be free from discrimination and retaliation, as contemplated by Texas Labor Code Section 21.2585.

#### **VII. JURY TRIAL DEMAND**

28. Plaintiff demands a jury trial.

#### **VIII. REQUEST FOR DISCLOSURE**

29. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or materials described in Rule 194.2.

## **IX. ATTORNEY'S FEES AND COSTS**

30. Plaintiff is entitled to recover reasonable and necessary attorney's fees and costs, including any applicable expert fees.

## **X. PRAYER**

Plaintiff prays that she recover from Defendant monetary relief over \$200,000.00 but not more than \$1,000,000.00, statutory damages the FMLA, and the Texas Labor Code; general damages; special damages; punitive damages as determined by the jury; reinstatement; prejudgment interest as provided by law; attorney's fees and expert fees; post-judgment interest as provided by law; court costs and all costs of suit; and such other and further relief to which Plaintiff may be justly entitled to, in law and in equity. Such damages sought by Plaintiff are within the jurisdictional limits of the court.

**SIGNED** on October 16, 2019.

Respectfully submitted,

**Chavez Law Firm**  
2101 N. Stanton Street  
El Paso, Texas 79902  
(915) 351-7772  
(915) 351-7773 facsimile

By: Michael R. Anderson

**Enrique Chavez, Jr.**  
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*Attorneys for Plaintiff*

**EXHIBIT "A"**

## U.S. EQUAL OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: Moises Perez  
3533 Tierra Zafiro  
El Paso, TX 79936

From: El Paso Area Office  
100 N. Stanton St.  
6th Floor, Suite 600  
El Paso, TX 79901



*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

453-2019-01178

Roxana LaMotte,  
Investigator

(915) 534-4198

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

## Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age

**Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Lucy V. Orta,  
Area Office Director

JUL 31 2019

(Date Mailed)

cc:

Maria D. Garcia  
VP of HR  
BODEGA LATINA D/B/A EL SUPER  
14601 B Lakewood Blvd.  
Paramount, CA 90723

Enclosure with EEOC  
Form 161 (11/16)

## INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** – in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

***IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.***